

Claimant was employed as a stocker. His job duties included heavy lifting, pulling pallets and putting up freight. Claimant alleged that beginning in approximately September 2001 he began to experience a lot of pain and swelling in his right wrist.

Claimant testified that he told his supervisor, Brandon Rojas, that he was having problems with his right wrist and that he also requested medical treatment. Claimant further testified that he also told another supervisor, Kevin Woods, that he needed transferred to a different department because of the problems he was experiencing with his right hand. Lastly, claimant testified that he told the store manager, Tim Hall, that he was having problems with his right wrist.

Kevin Woods, an assistant manager, testified claimant never told him he injured or aggravated his right wrist at work or that he was having any problems with his right wrist. Brandon Rojas, an assistant manager, also testified claimant never told him he injured or aggravated his right wrist at work or that he was having any problems with his right wrist. But Mr. Rojas did recall a conversation with claimant in June 2002 after claimant was no longer employed by respondent. In that conversation Mr. Rojas got the impression claimant was trying to pressure Mr. Rojas to say that claimant had given notice of the injury. Lastly, Mr. Rojas noted that if claimant had told Tim Hall, the store manager, about an injury that information would have been given to Mr. Rojas.

On cross-examination at the preliminary hearing claimant admitted he had been untruthful during his discovery deposition regarding the number and severity of prior injuries he had suffered to his right wrist.

The claimant is required to provide notice of a work-related accident to the respondent within 10 days or show just cause to extend the notice requirement to 75 days.¹ As noted, in this case, there is a major conflict between claimant's preliminary hearing testimony and the testimony of respondent's supervisors. Thus, the Board finds the credibility of claimant is of utmost importance in deciding this case.

The Board finds the ALJ, in specifically finding claimant did not provide timely notice, had to conclude that claimant's testimony was not truthful. The ALJ had the opportunity to evaluate both claimant and the assistant manager's testimony because they testified in person at the preliminary hearing. In circumstances such as this, where there may be conflicting evidence, the Board finds it is appropriate to give some deference to the ALJ's conclusions. The Board also finds that claimant's testimony is inconsistent and his testimony was contradicted by the testimony of respondent's assistant managers. The Board, therefore, concludes claimant failed to prove he provided respondent with timely notice of the accident.

¹ See K.S.A. 44-520.

Because of the inconsistencies involving the statements made by claimant at different times, the Board is unable to find reliable evidence upon which to base a finding of just cause to extend the period of giving notice of accidental injury as provided by K.S.A. 44-520.

Finally, a comment should be made regarding claimant's attachments to his brief to the Board. The Workers Compensation Act specifically provides that Board review is limited to the evidentiary record presented to the administrative law judge.² A letter dated March 19, 2002, that claimant requests the Board to consider, was not a part of the preliminary hearing record before the ALJ. Consequently, the Board cannot consider the letter as part of the preliminary hearing record.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but are subject to modification upon a full hearing on the claim.³

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Pamela J. Fuller dated December 13, 2002, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April 2003.

BOARD MEMBER

c: Randy S. Stalcup, Attorney for Claimant
Jon E. Newman, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Director, Division of Workers Compensation

² K.S.A. 44-555c(a).

³ See K.S.A. 44-534a(a)(2).